

### Black Interests in Slaveries

Karen E. Bravo

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BLACK INTERESTS IN SLAVERIES

Karen E. Bravo\*

Abstract

*In the last few decades, the world woke up to the persistence of the traffic in human beings, a severe form of human exploitation. The use of “slavery” to designate the traffic, and other severe forms of contemporary exploitation, evokes and invokes the 400-year-long traffic of Africans across the Atlantic and their enslavement in the New World. The implicit and explicit comparisons to the enslavement of the ancestors of Diasporic Blacks are used to further a superficial understanding of contemporary forms of exploitation and limited efforts to prevent or eradicate them. However, the voices of Diasporic Blacks are often absent in the debates regarding the use of the word “slavery” and the comparisons of old and new slavery.*

*In this Article, I explore Black interests in slavery past, present, and future, including uses of the word in the context of contemporary human trafficking discourse. The interests vary depending on the temporal period: the Past (understanding historic slavery); the Present (identifying and dealing with legacies of historic slavery); and the Future (disrupting the legacy).*

TABLE OF CONTENTS

Abstract..... 605

TABLE OF CONTENTS..... 605

PRELUDE: “CHARGED,” A PERSONAL NARRATIVE..... 606

I. INTRODUCTION ..... 609

A. Modern Trafficking and Exploitation ..... 610

B. Statistics on Trafficking and Exploitation ..... 613

II. BLACK INTERESTS IN SLAVERIES: DEFINITIONS ..... 614

A. “Black” ..... 615

B. “Interests” ..... 615

C. Slavery ..... 617

III. INTERESTS IN “SLAVERY” AND IN SLAVERIES OF THE PAST, PRESENT, AND FUTURE ..... 620

A. The Word “Slavery” ..... 620

\* Vice Dean and Professor of Law, Indiana University Robert H. McKinney School of Law. I am grateful for the attendance and feedback from participants in the July 2018 conference, Slavery Past, Present and Future: Third Global Meeting, held at the Indiana University Europe Gateway in Berlin, Germany, and the September 27, 2018, Justice Robert D. Rucker Lecture organized and held at the Valparaiso University Law School. This Article captures and expands on my comments at both events. Thanks as well to Professor Ursula Doyle of the Salmon P. Chase College of Law, Northern Kentucky University. I am also grateful to the editors and staff of the Valparaiso Law Review for their diligent and thoughtful editing. It is my honor to be included in this historic final volume of the journal.

606 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 53]

B. "Slaveries" .....	621
1. Past—Knowing and Understanding .....	622
2. Present—Today's Slaveries: Identification and Placement in Historical Context .....	626
3. Future—Disruption .....	629
IV. CONCLUSION.....	629

PRELUDE: "CHARGED," A PERSONAL NARRATIVE

For fourteen years now, I have researched and written about human trafficking and slavery, a topic that I had no intention of focusing on when I joined the legal academy. Things did not turn out as I had anticipated. Instead of researching and writing about international trade law and the World Trade Organization, I found myself compelled by the contemporary trade in and movements of human persons to focus on questions of the persistence, inevitability, and endurance of severe forms of human-to-human exploitation and on the use of the word "slavery" to characterize that exploitation.

I find that I have been "charged." I have been given a mission by the words written and sung by my fellow Jamaicans—Diasporic Blacks of the Caribbean. The reemergence into public view of severe forms of exploitation provides an obligation in the present to deeply understand the past and its legacies today and to disrupt transmission of those legacies into the future. With that sacred charge comes a commitment to reject the contemporary exploitation of our ancestors' historic enslavement and exploitation. Superficial and shortsighted instrumentalist use of ancestral exploitation dishonors them, and us, and disservices our future.

I experience persistent dissatisfaction with the literature and discourse on human trafficking and the public rhetoric surrounding it. The subjects of my dissatisfaction include the depiction of the experiences of the enslaved in different temporal periods, the obsession with limited subsets of exploited persons (*e.g.*, sex trafficking versus labor trafficking), and the nature and definition of "slavery." I am also concerned that the profligate use of the word "slavery" inflicts psychological harm on Diasporic Blacks, even while diminishing understanding of the scope and ongoing impact of ancestral enslavement. My own position on the word has fluctuated as I sought to explore commonalities and differences in historic and modern trades in human persons.<sup>1</sup>

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<sup>1</sup> See, *e.g.*, Karen E. Bravo, *The Role of the Trans-Atlantic Slave Trade in Contemporary Anti-Trafficking Discourse*, 9 SEATTLE J. SOC. JUST. 555, 555–56 (2011) [hereinafter, Bravo, *Trans-Atlantic Slave Trade*]; Karen E. Bravo, *Making 'Slavery' Work*, in SLAVERY PAST, PRESENT AND

“Ancestor on the Auction Block,” the 1948 poem by my fellow Jamaican, Vera Bell, is often recited by Jamaican schoolchildren. I first encountered the poem at primary and high school gatherings and celebrations, and its message has stayed with me—with its conflicted depictions of the Black Diaspora’s shame, ignorance, humiliation, rejection, and pride in our ancestral experience of enslavement and the present-day legacies of that enslavement.

“Ancestor on the Auction Block”

Ancestor on the auction block  
 Across the years your eyes seek mine  
 Compelling me to look.  
 I see your shackled feet  
 Your primitive black face  
 I see your humiliation  
 And turn away  
 Ashamed.  
 Across the years your eyes seek mine  
 Compelling me to look  
 Is this mean creature that I see  
 Myself?  
 Ashamed to look  
 Because of myself ashamed  
 Shackled by my own ignorance  
 I stand  
 A slave.  
 Humiliated  
 I cry to the eternal abyss  
 For understanding

. . . .

Ancestor on the auction block  
 Across the years  
 I look

I see you sweating, toiling, suffering  
 Within your loins I see the seed  
 Of multitudes  
 From your labour

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FUTURE CONFERENCE PROCEEDINGS (Catherine Armstrong & Jaya Priyadarshini eds., IDN Press 2016) (ebook); Karen E. Bravo, *Interrogating Everyperson's Roles in Today's Slaveries*, 31 TEMP. INT'L & COMP. L. J. 25, 27–28 (2017).

Grow roads, aqueducts, cultivation  
A new country is born  
Yours was the task to clear the ground  
Mine be the task to build.<sup>2</sup>

These verses of Vera Bell's poem capture our—the descendants of Africans enslaved away from the continent—conflicted response of aversion to and forgetting about enslavement of our ancestors and of slavery. We move in a dance of engaging and not engaging; of rejection, embrace, and ownership. The poet asks: Having been compelled to look, what will *I/we* build?

In a song that looped strongly and insistently throughout my childhood, another of my fellow Jamaicans, the reggae singer Burning Spear, implores me (us) to remember the time and experiences of slavery and to reckon with the past.

"Slavery Days"

Do you remember the days of slavery?  
Do you remember the days of slavery?

And how they beat us  
And how they worked us so hard  
And they used us  
'Til they refuse us

. . . .

Do you remember the days of slavery?

My brother feels it  
Including my sisters too  
Some of us survive  
Showing them that we are still alive

Do you remember the days of slavery?

History can recall, history can recall  
History can recall the days of slavery  
Oh slavery days! Oh slavery days!

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<sup>2</sup> Vera Bell, *Ancestor on the Auction Block* (1948), in *THE OXFORD BOOK OF CARIBBEAN VERSE* 28–29 (Stewart Brown & Mark McWatt eds., 2005).

While I remember, please remember  
 Do you do you do you, do you do you do you  
 Oh slavery days! Oh slavery days!<sup>3</sup>

Vera Bell's poem and Burning Spear's lyrics challenge the Black Diaspora and impose a sacred charge: to remember, understand, and build upon the experience of ancestral enslavement; to learn about and from their enslavement; to understand and combat its contemporary legacies; to challenge contemporary exploitation of their historic enslavement; and to disrupt the potential negative legacies ongoing into the future.

### I. INTRODUCTION

The exploration of Black interests identifies and links severe forms of contemporary exploitation with the chattel slavery inflicted on Black ancestors captured and traded away from the African continent to be enslaved. The exploration enhances knowledge of the ways in which the legacies of subordination are enshrined and perpetuated in social, cultural, and political systems, including contemporary international and domestic laws. Those legacies are experienced whether the Diaspora are part of and have formed majority Black modern states, such as Jamaica and other island states of the Caribbean, or constitute minority "others" in Western or formerly colonized states, such as the United States, Canada, the United Kingdom, and Brazil.<sup>4</sup>

My call for recognition, analysis, and incorporation of *Black* interests in today's slaveries does not mean that other peoples, races, and ethnicities have or should have no interests or responsibilities in, or concerns about, past, present, or future exploitation or enslavement. On the contrary, the enslavement and dehumanization of Africans corrupted and dehumanized both the historic *and* contemporary polities and

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<sup>3</sup> BURNING SPEAR, *Slavery Days*, on MARCUS GARVEY (Island Records 1975), <https://genius.com/Burning-spear-slavery-days-lyrics> [<https://perma.cc/D2M5-AKHB>]. To experience the emotional power of Burning Spear's performance, see *Burning Spear – Slavery Days Live*, YOUTUBE (June 21, 2015), <https://www.youtube.com/watch?v=oV8QWVph4f0> [<https://perma.cc/H99C-GZW5>].

<sup>4</sup> PAGE DUBOIS, *SLAVERY ANTIQUITY AND ITS LEGACY* 45–49 (2009); HILARY MCD. BECKLES & VERENE A. SHEPHERD, *SAVING SOULS: THE STRUGGLE TO END THE TRANSATLANTIC TRADE IN AFRICANS* 85–86 (2007). According to Beckles and Shepherd:

The inability of post-slavery societies to embrace blacks as citizens with equal civil rights particularly in the new nation states of North and South America was reflected in the enduring legacies of race hatred that only centuries of racialized chattel slavery could bring.

*Id.*

cultures of the former slave and colonial societies.<sup>5</sup> The emotional and psychological damage that arises from the racism used to justify the centuries-long enslavement of Africans and their descendants continues to have incalculable global effects. As a result, dehumanization is embedded in the institutions, mores, cultures, and dominant perceptions of those societies. Examples include: the subordination of and violence against women and those of non-binary gender identity; violence against racial minorities; and a nationalism that calls for the exclusion of outsiders and of “othered” insiders, such as racial minorities.

The word “slavery” is now used to describe and categorize a variety of severe forms of contemporary exploitation. A multiplicity of extreme forms of human exploitation had continued to fester and grow even after the formal abolition of slavery under international law. These were “hidden” in public view and included, for example, prison work camps in the United States, the gulags of the Soviet Union, and the sexual exploitation of women and girls worldwide, including in booming sex tourism destinations in Asia. Beginning in the 1990s with the dissolution of the Soviet Union, the world woke up to the persistence of the trade in human persons, a severe form of human exploitation.<sup>6</sup>

#### A. *Modern Trafficking and Exploitation*

In the late 1990s and early 2000s, confronting an apparent increase in the traffic and exploitation of human beings, domestic legislators, international organizations, non-governmental organizations (NGOs), and policymakers elevated the contemporary fight against severe forms of modern human-to-human exploitation. In 2000, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (“UN Trafficking Protocol”)<sup>7</sup> was adopted and ratified as a protocol to the United Nations

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<sup>5</sup> Private and governmental exploitation of the subordination of the Black Diaspora have negative impacts on members of the dominant race as well. See discussion *infra* Section III.B.1.

<sup>6</sup> See Bravo, *Trans-Atlantic Slave Trade*, *supra* note 1, at 557 (expanding on the development of modern human trafficking following the collapse of the Soviet Union).

<sup>7</sup> See Protocol To Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/45/49 (Vol. I) (2001), entered into force Sept. 9, 2003, <https://www.unhcr.org/protection/migration/4d52493b6/protocol-prevent-suppress-punish-trafficking-persons-especially-women-children.html> [<https://perma.cc/UPV8-HV7P>] [hereinafter UN Trafficking Protocol].

Convention Against Transnational Organized Crime.<sup>8</sup> In the United States, also in 2000, the Trafficking Victims Protection Act (TVPA) of 2000,<sup>9</sup> was adopted only a month before the UN Organized Crime Convention and UN Trafficking Protocol were opened for signature.<sup>10</sup>

A crucial contribution of the UN Trafficking Protocol to global anti-exploitation efforts is the creation of the first internationally agreed definition of trafficking. The UN Trafficking Protocol defined trafficking in persons as:

[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or other services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>11</sup>

The U.S. domestic law definition was substantially similar but distinguished between “human trafficking” and “severe forms of human trafficking.” That is, according to the TVPA, “severe forms of trafficking in persons” means:

sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or [] the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage,

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<sup>8</sup> United Nations Convention Against Transnational Organized Crime, G.A. Res. 25, annex I, U.N. GAOR, 55th Sess., Supp. No. 49, at 44, U.N. Doc. A/45/49 (Vol. I) (2001), [https://treaties.un.org/doc/Treaties/2000/11/20001115%2011-11%20AM/Ch\\_XVIII\\_12p.pdf](https://treaties.un.org/doc/Treaties/2000/11/20001115%2011-11%20AM/Ch_XVIII_12p.pdf) [<https://perma.cc/5UGP-NX3V>] [hereinafter UN Organized Crime Convention].

<sup>9</sup> See Trafficking Victims Protection Act, 22 U.S.C. § 7101 (2012).

<sup>10</sup> The UN General Assembly adopted the Convention on November 15, 2000, opening it for member state signature. The TVPA became law in the United States on October 28, 2000. See *Statement on Signing the Victims of Trafficking and Violence Protection Act of 2000*, 36 WEEKLY COMP. PRES. DOC. 44, at 2662 (Oct. 28, 2000).

<sup>11</sup> UN Trafficking Protocol, *supra* note 8, at Art. 3(a).



debt bondage, or slavery. . . . “[S]ex trafficking” means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.<sup>12</sup>

The two instruments, the United Nations, and the United States have been influential in disseminating knowledge about trading in human beings as a form of contemporary exploitation and shaping perceptions about the forms of exploitation targeted by their drafters.<sup>13</sup> Some examples of the types of contemporary exploitation that are categorized as “human trafficking” are: the enslavement of Asian jobseekers on Indonesian fishing boats; the exploitation of child labor on Ghanaian cocoa farms; the marriage of underage girls to adult males in a number of different countries; and the domestic servitude in exploitative conditions of immigrant maids in the homes of diplomatic families.<sup>14</sup>

As knowledge of human trafficking spread, and officials and NGOs attempted to grapple with understanding its scope and nature, some influential scholars and activists advocated for a change in terminology in order to, among other things, express their horrified realization of the continued existence of severe forms of exploitation and galvanize public and policy reaction.<sup>15</sup> In their view, the targeted form of exploitation – the trade in human beings – and other types of severe exploitation should be recognized as a modern form of slavery. The term is qualified by adding “contemporary” or “modern” or “contemporary forms of.” The activism surrounding the discourse has been wildly successful, and “human trafficking” is now virtually synonymous and is used interchangeably with “slavery.”<sup>16</sup>

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<sup>12</sup> 22 U.S.C. § 7102(11)(A)–(B), (12).

<sup>13</sup> For example, in addition to the obligations voluntarily undertaken by state parties under the Convention and Protocol, the series of State Department reports issued pursuant to the mandates of the TVPA have vastly increased public and institutional awareness of, and knowledge about, human trafficking. The U.S. State Department has issued Annual Reports each year from 2001 through 2018. Each successive report reflects an increase in the depth and breadth of coverage of human trafficking and the efforts against it.

<sup>14</sup> See generally U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT* (2018).

<sup>15</sup> See, e.g., KEVIN BALES, *DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY* 12–31, 232–62 (Univ. Cal. Press rev. ed. 2004) (discussing the rise of “new slavery” and possible solutions); E. BENJAMIN SKINNER, *A CRIME SO MONSTROUS: FACE-TO-FACE WITH MODERN-DAY SLAVERY* (paperback ed. 2008) (providing modern-day slavery examples in many countries).

<sup>16</sup> For example, the 2017 TIP Report provides, under the heading “What is Trafficking in Persons” with no introductory text, a description of various forms of human trafficking under the subheading “The Face of Modern Slavery.” U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT* 17 (June 2017). In another example, the website of Polaris, an influential U.S.-based NGO, analyzes 32,000 cases of human trafficking under the heading “The

B. *Statistics on Trafficking and Exploitation*

We are still trying to understand the scope of human trafficking. Estimates of the number of exploited persons vary. In the early 2000s, the estimates of men, women, and children trafficked across international borders each year ranged from 600,000 to 800,000, and some as high as 2,000,000.<sup>17</sup> Approximately 80% were women and girls and up to 50% were minors.<sup>18</sup> The majority of these individuals were said to be destined for commercial sexual exploitation. Around the same time, the International Labor Organization estimated that 12,300,000 people were enslaved in forced labor, bonded labor, forced child labor, sexual servitude, and involuntary servitude.<sup>19</sup> According to reports, human trafficking was estimated to be the third most profitable illicit industry after the trade in drugs and arms, generating \$7–12 billion per year.<sup>20</sup> By 2016, Walk Free Foundation's 2016 report—the Global Slavery Index—reported that 40 million persons were then enslaved.<sup>21</sup> Walk Free Foundation's methodologies have been fiercely challenged by academics, activists, and other organizations.<sup>22</sup> However, the estimates and the terminology of “slavery” have been adopted by the International Labor Organization and the International Office of Migration.<sup>23</sup>

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Typology of Modern Slavery.” *The Typology of Modern Slavery*, POLARIS, <https://polarisproject.org/typology> [<https://perma.cc/3FNQ-P6Y8>].

<sup>17</sup> See U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 6* (2005).

<sup>18</sup> *Id.*

<sup>19</sup> See *id.* (analyzing statistics related to differing forms of slavery).

<sup>20</sup> See 11 *Facts about Human Trafficking*, DOSOMETHING.ORG, <https://www.dosomething.org/us/facts/11-facts-about-human-trafficking> [<https://perma.cc/2FMN-K5UJ>]. Astonishingly, according to the organization, the average cost of a slave is only \$90. *Id.*

<sup>21</sup> See WALK FREE FOUNDATION, *THE GLOBAL SLAVERY INDEX 2016*, <https://downloads.globalslaveryindex.org/ephemeral/GSI-2016-Full-Report-1549123230.pdf> [<https://perma.cc/EVZ5-83ZC>].

<sup>22</sup> See Annie Bunting & Joel Quirk, *Contemporary Slavery as More than Rhetorical Strategy? The Politics and Ideology of a New Political Cause*, in *CONTEMPORARY SLAVERY: THE RHETORIC OF GLOBAL HUMAN RIGHTS CAMPAIGNS 5*, at 6 (2017), [https://glc.yale.edu/sites/default/files/pdf/bunting-quirk\\_contemporary\\_slavery\\_intro\\_rev.pdf](https://glc.yale.edu/sites/default/files/pdf/bunting-quirk_contemporary_slavery_intro_rev.pdf) [<https://perma.cc/MUQ2-J7WP>] (critiquing the Walk Free Foundation’s methodology for calculating the number of slaves globally as lacking credibility). Regardless of the lack of credibility in the methodology, these types of “facts” are still constructing the global slavery cause. *Id.*

<sup>23</sup> See INT’L ORG. OF MIGRATION, *GLOBAL TRAFFICKING TRENDS IN FOCUS: IOM VICTIM OF TRAFFICKING DATA, 2006-2016*, [https://www.iom.int/sites/default/files/our\\_work/DMM/MAD/A4-Trafficking-External-Brief](https://www.iom.int/sites/default/files/our_work/DMM/MAD/A4-Trafficking-External-Brief) [<https://perma.cc/SVD5-LEJS>] (noting that although the International Organization of Migration estimates may not be globally representative, the estimated number of enslaved victims is still thought to represent less than 1% of the actual number of modern-day slavery victims).

The use of “slavery” to designate the traffic in persons and other severe forms of contemporary exploitation stimulates and harnesses involuntary images of the 400-year-long traffic of Africans across the Atlantic and their enslavement in the New World. However, the voices of Diasporic Blacks are often absent from the debates regarding the use of the word and the comparisons of old and new slaveries. Instead, the implicit and explicit invocations of comparisons to the enslavement of the ancestors of Diasporic Blacks are used to further a superficial understanding of contemporary forms of exploitation and limited efforts to prevent or eradicate them.

Part II explains the terms “Black,” “interests,” and “slaveries” as used in this Article. Part III explores Black interests in relationship to different temporal periods. Part IV concludes that acknowledgement and inclusion of Black interests in slavery are essential to contemporary and future discourse about, and efforts to prevent severe forms of, exploitation today and into the future.

## II. BLACK INTERESTS IN SLAVERIES: DEFINITIONS

*“We should learn from the past, and not merely exploit it for emotional gain.”<sup>24</sup>*

Diasporic Blacks have special relationships with and interests in slavery and enslavement, rooted in the inheritability of their ancestors’ enslavement and subordinated status during the era of legal enslavement, and their own continued subjection to the legacies of historical exploitation in the present and into the foreseeable future. Racial subordination is enshrined in the economic, social, political, and cultural structures of contemporary global and individual states’ human existence and is nourished by the historic enslavement and colonization of non-European peoples by the empires of Western Europe. Today, black and brown people around the globe continue to be subjected to, and are most vulnerable to, exploitation. Diasporic Blacks must relive, in their daily lives, shadowed echoes of the enslavement and racial subordination of their ancestors.<sup>25</sup>

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<sup>24</sup> Karen E. Bravo, *Exploring the Analogy between Modern Trafficking in Humans and the Trans-Atlantic Slave Trade*, 25 B.U. INT’L L. J. 207, 295 (2007).

<sup>25</sup> See, e.g., Leonard Pitts, *Just Trying to Go about Your Day, While Black*, INDIANAPOLIS STAR, July 13, 2018, A17 (discussing some recent high profile incidents where individual white-identified U.S. persons police the boundaries of racial subordination by calling for police intervention against Black persons who are living “while Black” in the United States, the successor state to a slave society).

## A. “Black”

In this Article, “Black” means Diasporic Blacks, the darker subordinated “other” of Western and post-colonial societies. I focus on the descendants of Africans who were subjected to inheritable enslavement outside the African continent and who continue to experience subordination and discrimination in legacy slave societies such as the United States, the United Kingdom, France, Portugal, Brazil, and other colonial slave powers of the fifteenth through twentieth centuries. The use of “Black” in this Article does not include African enslavement of fellow Africans in Africa (even while acknowledging that the internal trade played an essential role in transatlantic, trans-Saharan, and Indian Ocean enslavement). Nor does it refer to Africans in Africa who were colonized and exploited by non-Africans but were not sold into diasporic enslavement. Instead, I focus on the Diasporic inheritors of the “natal alienation” identified by Jamaican sociologist Orlando Patterson.<sup>26</sup>

## B. “Interests”

My use of the word “interest(s)” seeks to capture a range of interconnected meanings of this richly freighted word. One of the definitions offered by *Black’s Law Dictionary* is “[t]he most general term that can be employed to denote a right, claim, title, or legal share in something.”<sup>27</sup> *The New Webster’s Comprehensive Dictionary of the English Language, Deluxe Edition* provides the following meanings, among others: “curiosity about, or intellectual or emotional involvement in something”; “something on which these feelings are fixed”; “concern for one’s own advantage or profit”; and “a legal or financial stake, right or title to a thing.”<sup>28</sup> According to the same *Webster’s* edition, the meanings of the verb form of “interest” include: “to arouse the attention or curiosity of”; “to cause to participate, esp. financially”; and “to involve the welfare of, affect.”<sup>29</sup> When the word is used as an adjective (“interested”), *Webster’s* offers the following definitions: “feeling or showing attention or

<sup>26</sup> See Orlando Patterson, PEEPAL TREE PRESS, <https://www.peepaltreepress.com/authors/orlando-patterson> [<https://perma.cc/7TDL-JBFX>]. See also ORLANDO PATTERSON, SLAVERY AND SOCIAL DEATH 13 (1982) (defining “slavery” as “the permanent, violent domination of natively alienated and generally dishonored persons”). Patterson further explains that “[s]lavery is one of the most extreme forms of the relation of domination, approaching the limits of total power from the viewpoint of the master, and of total powerlessness from the viewpoint of the slave.” *Id.* at 1.

<sup>27</sup> *Interest*, BLACK’S LAW DICTIONARY 729 (5th ed. 1979).

<sup>28</sup> THE NEW WEBSTER’S COMPREHENSIVE DICTIONARY OF THE ENGLISH LANGUAGE, DELUXE EDITION 503 (Lexicon Publications, Inc. 1987).

<sup>29</sup> *Id.* at 503–04.

curiosity"; "having a share or concern in something and esp. likely to be prejudiced for this reason"; and "motivated by a concern for one's own welfare or gain."<sup>30</sup> The website Dictionary.com offers the following definitions, among others: "something that concerns, involves, draws the attention of, or arouses the curiosity of a person"; "the state of being affected by something in respect to advantage or detriment"; and "a section of a community, etc[.], whose members have common aims."<sup>31</sup>

"Interests" in this Article encompasses both the complex relationship of contemporary Diasporic Blacks to "slavery" and their reactions to it. The relationship and reactions are omnipresent because of the continued trauma of ongoing experiences of subjugation and discrimination and the contemporary legal, social, economic, and cultural othering founded upon ancestral enslavement and its rationalizations. Black interests span the temporal spaces of the past, the present, and the future. Remembering, understanding, and seeing our ancestors as persons, and retroactively challenging their natal alienation, give rise to perceptions of the Black Diaspora's "ownership" of the word "slavery." This includes reactions to the cynically instrumentalist ways in which the word "slavery" and the images and invocations of enslaved Africans are used and deployed today.<sup>32</sup> Alongside a sense of ownership, as depicted in both Vera Bell's poem and Burning Spear's song, Diasporic Blacks experience a reflexive and strongly conflicted interest in remembering or not remembering, in avoiding or trying to ignore the impact of chattel slavery's legacies, including the toxic psychological harm on contemporary members of the Diaspora and their future descendants.

Two recent news stories exemplify the conflicted aversion embrace of Diasporic Blacks. In May 2018, Kanye West, a well-known and influential African-American rapper, stated in a much-publicized interview that "slavery was a choice."<sup>33</sup> That is, West displayed his interest in his ancestors' enslavement but revealed a lack of understanding of the slavery

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<sup>30</sup> *Id.* at 504.

<sup>31</sup> *Interested*, DICTIONARY.COM, <https://www.dictionary.com/browse/interested> [<https://perma.cc/8R65-WSKF>].

<sup>32</sup> See, e.g., Ivanka Trump, *The Trump Administration Is Taking Bold Action to Combat the Evils of Human Trafficking*, WASH. POST, Nov. 30, 2018. According to Ms. Trump:

President Abraham Lincoln and the abolitionist movement gave America a unique inheritance: a principled commitment to fight slavery in all its pernicious forms. This administration is continuing the fight to end modern slavery and using every tool at its disposal to achieve that critical goal.

*Id.*

<sup>33</sup> See, e.g., Harmeet Kaur, *Kanye West Just Said 400 Years of Slavery Was a Choice*, CNN (May 4, 2018), <https://www.cnn.com/2018/05/01/entertainment/kanye-west-slavery-choice-trnd/index.html> [<https://perma.cc/VV6R-MNE2>].

they experienced. He simultaneously acknowledged their exploitation, rejected their victimization by recasting them as victims who had *chosen* to be victimized (a “choice”), and distanced himself from their dehumanization and humiliation and from his own psychological injury.<sup>34</sup> In another example from earlier the same year, a Florida legislator, who appeared to have been actuated by religious Christian fervor, expressed her gratitude for her ancestors’ enslavement: “I thank God for slavery. . . . If it wasn’t for slavery, I might be somewhere in Africa worshipping a tree.”<sup>35</sup> The legislator has a less significant public profile than does West, so her remarks did not receive similar global attention. The legislator revealed perhaps an even more egregious level of ignorance and, simultaneously, a deeper psychological injury and consequent ancestral rejection than West. To her, her ancestors’ natal alienation—dehumanization and centuries-long exploitation—is a blessing of which she is a contemporary beneficiary due to her status as a Christian believer. She perhaps did not know that many contemporary Africans *are* Christians but that their ancestors did not have to undergo slavery in order to reach this “exalted” status or that beauty and meaning are inherent in all religions.

### C. *Slavery*

“Modern” or “contemporary” slavery and “modern” or “contemporary” *forms of slavery* are examples of the terms used to describe a variety of severe forms of contemporary exploitation. These include the types of exploitation that fall within the definition of “human trafficking” as well as other types of exploitation. These also include, depending on the organization: the labor and sexual exploitation of any human being; child labor; child soldiers; the prostitution of underage individuals; exploitative domestic, construction, agricultural, and farm labor conditions, among others; and debt bondage and indentured servitude.<sup>36</sup>

Narratives of today’s slavery include: (1) an immigrant woman recruited from Botswana to provide babysitting services in southern Indiana—she is held in domestic servitude (slavery) on the grounds of

<sup>34</sup> See *id.* (rejecting the notion that slaves are victims and stating that, although slaves were not shackled based on their free will, they did choose to be mentally enslaved past the physical enslavement).

<sup>35</sup> See, e.g., Kwaku, *Kimberly Daniels Thanks God for Slavery*, YOUTUBE (Mar. 9, 2018), <https://www.youtube.com/watch?v=CKCSUbjceeU> [https://perma.cc/JL7W-36CR]; Michael Stone, *Black Florida Lawmaker Thanks God for Slavery*, PATHEOS PROGRESSIVE SECULAR HUMANIST BLOG (Mar. 1, 2018), <http://www.patheos.com/blogs/progressivesecularhumanist/2018/03/black-florida-lawmaker-thanks-god-slavery/> [https://perma.cc/QN7P-2JSU].

<sup>36</sup> See, e.g., U.S. STATE DEPARTMENT, *TRAFFICKING IN PERSONS REPORT 2* (2018).

Indiana University;<sup>37</sup> (2) young Afghan boys (*bacha bazi*) held in sexual slavery by Afghan military commanders and forced to publicly perform for their guests;<sup>38</sup> and (3) African migrants who cross the Sahara and the Mediterranean in search of a better life in Europe and the Nigerian women who, as a result, are prostituted on the streets of Rome and other Italian cities.<sup>39</sup>

Use of the word “slavery” to describe these forms of contemporary exploitation invokes the centuries-long enslavement of Africans across the Atlantic and their exploitation in the New World. However, the implicit and explicit comparisons of Diasporic ancestral enslavement are used to further a superficial understanding of contemporary forms of exploitation and limit efforts to prevent or eradicate them. Contemporary uses of the word “slavery” demonstrate trends such as exploitation of transatlantic slavery’s status as an emotional touchstone, triggering visceral imagery and complex emotions and stimulating the audience to action as well as assumption of the righteous aura of historic abolitionist figures and campaigns.<sup>40</sup>

Absent from the use is the question: What reaction do the word and its use trigger for Diasporic Blacks? For Diasporic Blacks, the word “slavery” evokes a double-edged psychological harm of either remembering or not remembering (or misremembering) historic slavery and reminders of the subordinated status of Blackness in the past and present, as well as the foreseeable future. Another potential harm is the possibility that misuse and misremembering of historic (chattel) slavery by profligate invocations of “slavery” risks compounding further misunderstanding of the contemporary experiences of the Black Diaspora by both the dominant society and Diasporic Blacks themselves.<sup>41</sup> Despite invocation of their ancestors’ enslavement, the voices of Diasporic Blacks are often absent from the debates regarding both the use of the word and

<sup>37</sup> See Tim Swarens, *Trafficking Victim’s Nightmare: I Was Enslaved on IU Campus What Began with an Incredible Offer Turned into 18 Months of Torment*, INDIANAPOLIS STAR (May 3, 2018), 2018 WLNR 28909515. According to Swarens, “She was a slave.” See *id.* (emphasizing that Kaisara was exploited through forced labor and that she is not alone because twenty-five million are exploited annually).

<sup>38</sup> See, e.g., Rod Nordland, *Afghan Pedophiles Get Free Pass from U.S. Military, Report Says*, N.Y. TIMES (Jan. 23, 2018), <https://www.nytimes.com/2018/01/23/world/asia/afghanistan-military-abuse.html> [<https://perma.cc/F2EN-2GZX>] (describing, for example, “an Afghan commander [who kept] a boy chained to his bed as a sex slave”); Samuel Vincent Jones, *Ending Bacha Bazi: Boy Sex Slavery and the Responsibility to Protect Doctrine*, 25 IND. INT’L & COMP. L. REV. 63, 65 (2015).

<sup>39</sup> See ELENA PERLINO, PIPELINE: HUMAN TRAFFICKING TO ITALY (2014).

<sup>40</sup> See Bravo, *Trans-Atlantic Slave Trade*, *supra* note 1, at 584 (identifying and analyzing these trends).

<sup>41</sup> See *supra* notes 34–35 and accompanying text.

the new slaveryes. But Diasporic Blacks have a unique interest in slaveryes past, present, and future—understanding, owning, and learning about and from enslavement. The acknowledgement of Black interests, and inclusion of Diasporic voices and their insights into the contemporary anti-exploitation discourse, is essential to a systemic and structured fight against severe forms of contemporary exploitation.

I used the term “today’s slaveryes” in a previous article in response to the expansion of the variety of types of contemporary exploitations that are labeled as “slavery.”<sup>42</sup> My coinage and use of the term challenged the contemporary use of “slavery” and invoked pluralities—of contested perceptions about the nature of slavery and its contemporary existence and prevalence, of exploitation forms, and of meanings of the word “slavery.”<sup>43</sup> It questioned the methods and reasons for the ways in which “slavery” is used today.<sup>44</sup>

In this Article, I demand yet more of the word “slaveryes,” asking that it perform seemingly contradictory work that reflects my own internal conflict.<sup>45</sup> First, I use “slaveryes” to signal commitment to combatting the multiplicity and seemingly ever-expanding contemporary forms of severe human-to-human exploitation. Second, “slaveryes” also conveys my skepticism of and concern regarding the increasing uses of the word “slavery” in contemporary anti-trafficking and anti-exploitation discourses, even while I debate whether a too-restrictive adherence to the historic meaning of chattel slavery may leave unaddressed other extreme forms of exploitation. In other words, might adherence to definitional rigor undermine broader anti-exploitation efforts? Third, “slaveryes” calls for awareness of the potential dangers of overuse of the word “slavery”—that lack of definitional rigor will result in dilution of the meaning or impact of the word, such that we fall into a mishmash of meaninglessness through overuse. If *every* contemporary exploitation is “slavery,” is *any* exploitation “slavery?” Fourth, “slaveryes” calls for creation or adoption of a new word.<sup>46</sup> That word would allow for preservation of the historic meaning of “slavery” (both its traditional chattel ownership sense and the emotional freight of the exploitation). At the same time, the new or newly adopted word would signify the severity of contemporary forms of exploitation and mobilize institutional and private reactions against it.

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<sup>42</sup> See Karen E. Bravo, *Interrogating Everyperson’s Roles in Today’s Slaveryes*, 31 *TEMPLE INT’L & COMP. L. REV.* 25, 25 (2017).

<sup>43</sup> *Id.* at 28.

<sup>44</sup> *Id.* at 30.

<sup>45</sup> *Id.* at 43.

<sup>46</sup> *Id.* at 38. As a magpie language that readily adopts and adapts words from other languages, English is well suited to pioneering this proposed linguistic response.



Finally, by using “slaveries,” I claim that Diasporic Blacks have a singular interest in the use of the term.

A fundamental understanding on which I base this Article’s exploration of Black interests in slaveries is the rejection of the contemporary exploitation of Diasporic Blacks’ ancestors’ historic chattel slavery and exploitation while accepting Diasporic Blacks’ continued subordination as a default characteristic of contemporary society – that is, the need to make our ancestors’ exploitation meaningful through rejection of exploitative contemporary use of their enslavement. This is especially the case when the exploitation of ancestral suffering and the powerful reactions it invokes is used: (1) to maintain and enhance the ongoing negative legacies of the historic wrongs; (2) to obscure the systemic and institutional exploitation that makes slaveries possible; and (3) to dissipate potential challenges to the power-subordination structures that are the legacies of ancestral enslavement.

### III. INTERESTS IN “SLAVERY” AND IN SLAVERIES OF THE PAST, PRESENT, AND FUTURE

The Black Diaspora has interests in the word “slavery” and in slaveries of the past, present, and future. The ongoing legacy of diasporic enslavement gives a special status to Diasporic Blacks regarding matters of slavery.

#### A. *The Word “Slavery”*

My exploration of Black interests in slavery challenges the (mis)appropriation and (mis)use of “slavery” and the ways in which it is used to diminish understanding of and remove attention from Diasporic Black ancestral slavery and its continued legacies. I question the use of the word “slavery” where it is used to restrict the gaze to only the subset of severe forms of exploitation that elicit official outrage and funding and whose exposure serves the interests of the powerful, while ignoring endemic forms of exploitation in which states and economic, political, and social structures are involved and complicit.<sup>47</sup>

The inherited status embedded in genotype and phenotype and ongoing multigenerational trauma give to Diasporic Blacks a quasi-ownership interest in the word “slavery” as it is used in contemporary global society. Blacks have a particular interest in that use, rooted in the double-edged psychological harm of either remembering or not

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<sup>47</sup> See, e.g., Karen E. Bravo, *Interrogating the State’s Role in Human Trafficking*, 25 IND. INT’L & COMP. L. REV. 9 (2014).

remembering (or misremembering) their ancestors' slavery. Ancestral enslavement can be honored, and the Diaspora's survival celebrated fully, only when the descendants are enjoying the fruits of freedom. The descendants experience psychological harm from hearing the word "slavery" as it is increasingly bandied about in the media, official reports, and everyday conversation. That harm stems from invocation of the dehumanization of Diasporic ancestors and reminders that the ancestors' subordinated and exploited status was transmitted to and inherited by their descendants, including contemporary descendants. The psychological harm is intensified when the word is used instrumentally and superficially to *appear* to address contemporary forms of exploitation, while ignoring the ongoing harmful experiences of ancestral enslavement, including racism and its consequences. Already conflicted about remembering and honoring ancestral experiences, Diasporic Blacks now witness the contemporary exploitation of their ancestors' experiences in the past, even while their own subordination (and, perhaps, enslavement<sup>48</sup>) is normalized in the dominant culture.<sup>49</sup>

#### B. "Slaveries"

Contemporary reality is the legacy of the past and connects the past and the future. That legacy shapes perceptions, actions, and policies today and, unless challenged, reframed, and disrupted, will (mis)shape our futures. Black interests in slaveries include more widespread and knowledgeable individual, societal, and institutional understanding of and structural reckoning with both Diasporic ancestors' exploitation as chattel slaves *and* the legacies of that exploitation in the present. Understanding and reckoning would entail, among other things, recognition of the globally relevant foundational nature of transatlantic slavery,<sup>50</sup> including unearthing, connecting, and shining a light upon ancestral enslavement's relationship to contemporary experiences, as well as identifying and warning about the prospectively damaging future legacies in order to disrupt their transmission to our descendants.

To fulfill and implement these interests necessitates institutional (policy) and individual (interpersonal) recognition of the unique nature of the 400-year-long enslavement of Africans in the Western Hemisphere.

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<sup>48</sup> See *infra* Section III.B.2 (posing the question whether certain phenomena can be characterized as contemporary Black enslavement).

<sup>49</sup> See, e.g., George Yancy, *The Ugly Truth of Being a Black Professor in America*, CHRON. HIGHER EDUC. (Apr. 29, 2018), <https://www.chronicle.com/article/The-Ugly-Truth-of-Being-a/243234> [<https://perma.cc/XTW2-PU6Y>].

<sup>50</sup> See, e.g., HILARY MCD. BECKLES, *BRITAIN'S BLACK DEBT: REPARATIONS FOR CARIBBEAN SLAVERY AND NATIVE GENOCIDE* 23, 197 (2013).

622 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 53]

This requires, for example, recognizing the unprecedentedly successful “innovation” of permanent subordination that was achieved through the intended and ongoing permanence of enslavement and enslaveability (signaled by dark skin and African genetic and racial heritage)<sup>51</sup> and the depersonalization and dehumanization of human beings through imposition of positive law.<sup>52</sup>

Engagement with “slaveries” demands acknowledgement of the essential role played by positive law in service to economic and political empowerment of Western empires and in support of the lasting legacies of those empires. We must analyze the movement away from the dominance of natural law theories to the triumph of positivism and its use to construct permanent legal subordination and transmute human persons into chattel property.<sup>53</sup>

1. Past—Knowing and Understanding

In an earlier article, I stated: “We should learn from the past, and not merely exploit it for emotional gain.”<sup>54</sup> In the present, we must learn about and engage with historic slavery, including responding to the concept of whether “slavery” ever ended or, instead, endlessly evolves and mutates in place and time.

a. *The Role and Impact of Slavery*

Black interests in the past are centered around *knowing* and *understanding* ancestral enslavement in order to reclaim the humanity of enslaved Black ancestors and provide the means of challenging negative contemporary legacies. A central pillar of Black interests in slaveries is the incorporation of deeper contextualized knowledge of history and understanding of the constructed nature of our default perceptions and

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<sup>51</sup> See DAVID BRION DAVIS, *INHUMAN BONDAGE: THE RISE AND FALL OF SLAVERY IN THE NEW WORLD* 34 (2006) (“While slaves in antiquity could usually be recognized by clothing, branding, collars, and other symbols, the millennia-long search for ways to identify ‘natural slaves’ would eventually be solved by the physical characteristics of sub-Saharan Africans.”). Brion Davis traces the association of Black skin to, among other things, black enslavement in the Muslim world that preceded the transatlantic slave trade. See *id.* at 62–64.

<sup>52</sup> “Positive law” and “positivism” refers to the theoretical paradigm pursuant to which “[l]aw was a signal—a command from the sovereign to those subject to his power concerning conduct.” See JEFFREY L. DUNOFF, STEVEN R. RATNER & DAVID WIPPMAN, *INTERNATIONAL LAW NORMS, ACTORS, PROCESS: A PROBLEM-ORIENTED APPROACH* 985 (3d ed. 2010).

<sup>53</sup> See ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* 66 (2005) (discussing the impact of positive law in subordinating and facilitating the exploitation of non-whites).

<sup>54</sup> See Karen E. Bravo, *Exploring the Analogy between Modern Trafficking in Humans and the Trans-Atlantic Slave Trade*, 25 B.U. INT’L L. J. 207, 295 (2007).

norms. This requires engagement with and deep inquiry into the who, when, what, where, and why of transatlantic enslavement, in all of its complexity. The inquiry goes beyond superficial knowledge and understanding of historic slavery. From a deeper knowledge of our ancestors' chattel slavery, and its causes and contexts, and appreciation for transatlantic slavery as a fundamental and intrinsic part of the Industrial Revolution, Diasporic Blacks will gain and share a deeper understanding of the ways in which ancestral exploitation was founded upon economic imperatives of global labor demands, resource exploitation, and wealth creation and concentration.

Knowledge of history and of slavery's role in creating the powerful institutions and power structures of today will provide tools to reject perceptions of intrinsic racial subordination – so will understanding of the ways in which slavery was integral to the economic, social, cultural, and political structures upon which New World colonization relied and slavery's role in facilitating Western colonization and Western monopolization of global resources.

*b. Claiming the Ancestor*

Ancestors experienced the theft of their persons, their children, the fruits of their labor, and their descendants' futures and future prosperity. Black interests in slaveryes past include reclaiming the humanity of their ancestors. To do so, Blacks must recognize that transatlantic slavery took place within the context of a brutal world. Transatlantic slavery arose and became a dominant form of exploitation in an era of many forms of contemporaneous exploitation (*i.e.*, slaveryes) that would fit within contemporary definitions of human trafficking and of "modern forms of slavery."<sup>55</sup> These included systems of serfdom in some European countries, British press gangs that kidnapped individuals to become sailors aboard British Navy vessels, public executions, Barbary piracy, and the permanent deportation by English authorities of their fellow English persons convicted of minor offenses into virtual slavery across the globe (first the American colonies, then Australia).<sup>56</sup> The "innovation" of transatlantic slavery and a major cause of its ongoing negative effects is the permanence of the subjugation and exploitation enabled by the dark skin color and African features of Africans and their descendants.

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<sup>55</sup> See Karen E. Bravo, *Interrogating Everyperson's Roles in Today's Slaveryes*, 31 TEMP. INT'L & COMP. L. REV. 25, 27 (2017).

<sup>56</sup> See Bravo, *Trans-Atlantic Slave Trade*, *supra* note 1, at 560–61.

c. *Role of Law*

Laws shape default understanding of human and other interactions. International law was conceptualized and structured to permit and facilitate slavery, as well as colonize and exploit non-Europeans.<sup>57</sup> The dominance and longevity of the transatlantic slave trade was made possible by the triumph of positive law over natural law.<sup>58</sup> Black de jure and de facto demotion from persons to quasi- and non-persons through the mechanism of legal enactments and interpretations,<sup>59</sup> as well as customary practices,<sup>60</sup> led to the entrenchment of quasi- and non-personhood in historic and *contemporary* social and cultural norms and mores. Pursuant to the concepts of positivism, enforceable law was produced only through the enactments of human legislators and entities, not pursuant to natural laws—rights and obligations inhering in all humanity that were superior to the enactments of sovereigns and legislators. As a result, since no natural law mandated recognition of non-white humanity and legal personhood, neither the prior occupation of territory nor the equal humanity of non-Europeans had to be recognized and protected. It is through the conveniently expanding dominance of theories of positive law that the non-European indigenous people of the world were dispossessed of their territories, personhood, and labor. It is through the power of positive law that the humanity and rights of non-European “others,” including Africans, could be ignored, circumscribed, and then eliminated. Social and cultural reactions to the legal reordering of humanity gave full permission for and implemented the dehumanization of Africans, Native Americans, and Asians. Economic might earned through the industrialization fueled by slave trade proceeds<sup>61</sup> funded expansion into other areas of the globe. Military conquest and use of force were the de facto mechanisms that allowed the imposition of legal non-personhood.<sup>62</sup>

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<sup>57</sup> See ANGHIE, *supra* note 54.

<sup>58</sup> See Karen R. Bravo, *Exploring the Analogy between Modern Trafficking and the Trans-Atlantic Slave Trade*, 25 B.U. INT'L L.J. 207, 249 (2007).

<sup>59</sup> See, e.g., PAUL FINKELMAN, *THE LAW OF FREEDOM AND BONDAGE: A CASEBOOK passim* (1986). Finkelman examines and analyzes the substance and impact of state laws and judicial interpretations in the states of the United States of America.

<sup>60</sup> Examples include the legal significance of European explorers planting the flags of their nations. It signified, vis à vis other European nations, possession and domination of territories and peoples whose rights were symbolically extinguished.

<sup>61</sup> See ERIC WILLIAMS, *CAPITALISM AND SLAVERY* 126 (Univ. N.C. Press Chapel Hill 1911) (highlighting that in the late 1700s the slave trade was something the English government would recognize as repugnant, however, the economic benefits it provided made it an impossibility to abolish at the time).

<sup>62</sup> See *id.* at 40 (showing the military rivalry between England and France over commodities, most importantly, slaves).

*d. Cognitive Dissonance and Racial Discrimination*

Black interests in slaveryes include the imperative to understand the origins and nature of racism in the individual countries where the Black Diaspora resides. Although hostility to the outsider appears to be rooted in human DNA, with a seemingly automatic “us versus them” heritage of humanity’s tribal past, anti-Black racism has a special place in contemporary global life. American and Western European anti-black racism and its enduring virulence was entrenched by the cognitive dissonance engendered by the contradictions between the Enlightenment era’s theories and soaring language about human equality and the de facto dehumanization of fellow human beings. Commitment to the economic and power benefits of African enslavement, however, demanded that White Americans and Europeans construct a rationale and theoretical foundation that legitimized the exploitation of Africans.

That theoretical foundation was and continues to be racism. Anti-Blackness was built on a scaffolding of legal mechanisms that extinguished African humanity in the eyes of Western law and transmuted Africans and those of African descent into chattel beasts and the normative consequences of those laws on individual, social, and institutional mores.<sup>63</sup> From working side by side with Africans while in conditions of indentured servitude, lower-class whites’ status rose inevitably with their acceptance and support of the legislative, physical, and psychological theft of their former companions’ legal personhood and humanity. The scientific racism that undergirded Europeans’ theoretical understanding of their place in the world during much of the eighteenth, nineteenth, and twentieth centuries was another reaction to that cognitive dissonance, one that facilitated acceptance of the permanent enslavement and inferiority of Africans and their descendants.<sup>64</sup>

The legacies of the construction of anti-Black racism continue to be experienced worldwide today. The historic dehumanization of the dark other lay the groundwork for contemporary forms of exploitation and the

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<sup>63</sup> See *id.* at 8 (explaining that the only time legislation regarding slave conditions was considered was when it related to African slaves because they were more important to the economy than Indian slaves).

<sup>64</sup> Examples include George Cuvier (1769–1832), who supported polygenism. According to the theory, the physical differences among races resulted from their status as separate species. See RACE, SCIENCE AND MEDICINE, 1700–1960, at 65 (Waltraud Ernst & Bernard Harris eds., 1999). See MICHAEL BANTON, RACIAL THEORIES (2d ed. 1998), for discussion and analysis of the evolution in the concepts of racial theories. See also KENAN MALIK, THE MEANING OF RACE: RACE, HISTORY AND CULTURE IN WESTERN SOCIETY 69, 88–91 (1996) (noting that while Enlightenment may have, for the first time, established the idea of human emancipation, the era also created ambivalence toward slavery and divisions in society resulting from capitalism).

626 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 53]

default expectations of inferiority and subordination of non-whites and created and structured the vulnerabilities that give rise to contemporary forms of exploitation.

2. Present – Today’s Slavery: Identification and Placement in Historical Context

Contemporary systems of Black subordination and human exploitation are the progeny of transatlantic slavery and the concentration of wealth and power that founded the modern world. Black interests in the present include identifying contemporary slavery and mapping their relationship to ancestral enslavement.

The forms of exploitation that have elicited concern and contemporary use of the word “slavery” include, for example, sexual exploitation of women and minors, coerced and indebted labor, child labor, and underage marriage. Those efforts and condemnations have been focused on individual private actors and the wrongdoings of transnational organized crime syndicates. For the most part, the slavery that states, NGOs, and other activists seek to eliminate turn a blind eye to contemporary slavery committed and facilitated by state actors – today’s black slavery.

a. *Today’s Black Slavery?*

Blacks are pathologized and criminalized throughout legacy slave societies and in the broader global structure. Members of the Black Diaspora are the target of institutional racial subordination in all aspects of their contemporary existence. They experience the subordination from birth through death and include, among other things, health disparities (such as medical apartheid),<sup>65</sup> housing segregation, and criminalized existence (e.g., mass incarceration<sup>66</sup> and unlawful killings).

The Black Diaspora’s criminalized existence is perhaps the starkest example of today’s black slavery. Black life is policed such as to facilitate the continued weight of the state, which, even after the legal abolition of slavery, has continued to take the lead in facilitating enslavement and

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<sup>65</sup> HARRIET A. WASHINGTON, *MEDICAL APARTHEID: THE DARK HISTORY OF MEDICAL EXPERIMENTATION ON BLACK AMERICANS FROM COLONIAL TIMES TO THE PRESENT* 108 (2006).

<sup>66</sup> See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 60 (The New Press rev. ed. 2012) (analyzing the statistical disparity between African-Americans being put in jail compared to other races). See also Michelle Alexander, *The Newest Jim Crow*, N.Y. TIMES (Nov. 8, 2018), <https://www.nytimes.com/2018/11/08/opinion/sunday/criminal-justice-reforms-race-technology.html> [<https://perma.cc/M275-TUCS>] (examining inherent racism within new criminal justice reforms).

exploitation in accordance with positive law. This includes, for example, traffic stops and unlawful killings.<sup>67</sup> United States law enforcement shoot and kill unarmed black persons at a high rate.<sup>68</sup> High profile shootings include the killings of Michael Brown, Philando Castille, and Tamir Rice.<sup>69</sup> If indicted, officers are usually found not guilty.<sup>70</sup> It is Blackness and its permanent link to ancestral enslavement that is the key. In one of the latest of such incidents, a Black immigrant from the Caribbean was shot and killed by a white officer who claimed to have mistakenly entered his apartment, believing that it was hers.<sup>71</sup> Consider also the killing of African immigrant Amadou Diallo in 1999.<sup>72</sup> His black skin, and its presence and meanings in the United States, not ancestral enslavement, made him law enforcement prey.

Although the state constructs, implements, and polices the contemporary iterations of Black slaveryes, private actors also play their role in policing the lines of subordination, unbelonging, and quasi-personhood.<sup>73</sup> White-identified U.S. residents' roles have been exposed through the prevalence of cell phones and the dissemination of video images through social media that show in vivid color their policing of Black subordination ("living while Black"). These incidents include going

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<sup>67</sup> See Crystal Hill, *IU Law Professor Sues Indianapolis Police over 2016 Traffic Stop, Arrest*, INDIANAPOLIS STAR (Jan. 11, 2018), <https://www.indystar.com/story/news/2018/11/01/iu-law-professor-sues-impd-over-2016-traffic-stop-arrest/1808331002/> [<https://perma.cc/LF8H-SQDH>] (displaying the racism inherent in our justice system through the detention and arrest of Kevin Brown, a well-known law professor at Indiana University, by police in Indianapolis on a spurious traffic charge).

<sup>68</sup> See Charles Menfield et al., *Do White Law Enforcement Officers Target Minority Suspects?*, 79 PUB. ADMIN. REV. 56, 58 (2018) (studying the disproportionate number of African-Americans killed by police officers every year in the United States).

<sup>69</sup> See, e.g., Jasmine C. Lee & Haeyoun Park, *15 Black Lives Ended in Confrontation with Police. 3 Officers Convicted.*, N.Y. TIMES (Oct. 5, 2018), <https://www.nytimes.com/interactive/2017/05/17/us/black-deaths-police.html> [<https://perma.cc/P3LW-33T2>] (furthering a look into the statistical disparity of police officers convicted compared to the lives that they have killed).

<sup>70</sup> See *id.* (showing how police officers are usually not held accountable for the killings of Black Americans).

<sup>71</sup> See Manny Fernandez & Marina Trahan Martinez, *A Dallas Police Officer Shot Her Neighbor, and a City Is Full of Questions*, N.Y. TIMES (Sept. 14, 2018), <https://www.nytimes.com/2018/09/14/us/botham-jean-dallas-shooting-amber-guyger.html> [<https://perma.cc/XZB4-Q5KN>] (examining the shooting of a Black immigrant and how it ties into ancestral enslavement).

<sup>72</sup> See Michael Cooper, *Officers in Bronx Fire 41 Shots, and an Unarmed Man is Killed*, N.Y. TIMES (Feb. 15, 1999), <https://www.nytimes.com/1999/02/05/nyregion/officers-in-bronx-fire-41-shots-and-an-unarmed-man-is-killed.html> [<https://perma.cc/E4LC-X8Z6>] (providing another example of an unarmed Black immigrant being shot to death by the police).

<sup>73</sup> See *id.* (depicting how it is not just state-run actors that take part in the ancestral enslavement of Black people in the United States).



to Starbucks while Black, sleeping in one's own college dorm while Black, barbecuing while Black, selling lemonade while Black, and renting an Airbnb while Black.<sup>74</sup>

Diasporic Blacks and the societies in which they live subordinated lives need to understand and treat these as part of a systemic legacy, not as disaggregated singular acts driven only by individual animus. Exploration of Black interests in today's slaveries reveals the need to focus on linking the slaveries identified as part of the anti-human trafficking movement and today's Black slaveries. Isolated attempts to combat a subset of severe forms of contemporary exploitation can yield only superficial results. The real work of contemporary anti-slavery is to unearth the historic roots of vulnerability, map their relationship to contemporary structures and cultures of exploitation, dispel the foundations of the racist ideologies, and apply pressure to the structures.

*b. Additional Consequences*

It is time to acknowledge the ways in which slavery harms both the descendants of the enslaved and of the enslaver. Those tools of subordination of members of the Black Diaspora have had far-reaching effects and have also swept in poor whites. State and private mechanisms deployed to subordinate Blacks can be, and have been, used to subordinate other groups. Acceptance of and participation in the targeting of Blackness is linked to the targeting of other groups. This includes the imposition on them of some of the economic disadvantages intended to target Blacks. For example, poor housing policies may target Blacks but also have consequences for economically disadvantaged whites.<sup>75</sup> Other examples include anti-Blackness social welfare policies that have negative consequences for and increase the vulnerability of persons of all racial and ethnic origins.<sup>76</sup>

Contemporary structures depend on exploitation of racial animus to gain and maintain support of lower-class whites for policies that are against their interests. They play a role in policing the boundaries of

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<sup>74</sup> See, e.g., P.R. Lockhart, *Living While Black and the Criminalization of Blackness*, VOX (Aug. 1, 2018), <https://www.vox.com/explainers/2018/8/1/17616528/racial-profiling-police-911-living-while-black> [<https://perma.cc/RT5K-K37P>] (summarizing some recent incidents during which white persons overacted and called law enforcement on Black persons not engaged in criminal or antisocial activity).

<sup>75</sup> See Emily Badger, *Black Poverty Differs from White Poverty*, WASH. POST (Aug. 12, 2015), [https://www.washingtonpost.com/news/wonk/wp/2015/08/12/black-poverty-differs-from-white-poverty/?utm\\_term=.7d4b5bcf394e](https://www.washingtonpost.com/news/wonk/wp/2015/08/12/black-poverty-differs-from-white-poverty/?utm_term=.7d4b5bcf394e) [<https://perma.cc/P732-QERW>] (noting many differences, including that Black poverty is more concentrated and isolated).

<sup>76</sup> See generally THOMAS M. SHAPIRO, *TOXIC INEQUALITY: HOW AMERICA'S WEALTH GAP DESTROYS MOBILITY, DEEPENS THE RACIAL DIVIDE, AND THREATENS OUR FUTURE* (2017).

human and non-human through the reproduction and innovation of laws and social norms whose origin is transatlantic slavery.

### 3. Future – Disruption

A fundamental interest of the Black Diaspora is universal liberation from the current and future negative legacies of ancestral enslavement. Negative effects of historic and contemporary slavery will continue to fall most heavily on the Black Diaspora and other people of color and affect our descendants. Black interests in future slavery focus on disrupting and challenging the engrained racist assumptions of Black inferiority built into contemporary global structures.

If we unearth the relationships among contemporary slavery, historic slavery, and today's Black slavery, the vulnerability of people of all races and genders reveals that discrimination and racial hatred is both a product of and justification for enslavement and exploitation.

Knowledge about historic slavery and its contemporary legacies will contribute to the fight against future slavery and can be used to disrupt the negative legacies. This will be attained through enriched and more widespread understanding of law and its limitations. Law and the legal system created and policed slavery and exploitation – and continue to do so today. However, contemporary legal prohibition of slavery coexists with state and private systems that facilitate exploitation. We must uncover the ways in which laws and private behavior create a web of vulnerability and disadvantage. Today's Black slavery are the canary in the coal mine: they reveal the inadequacy of legal prohibition, where innovative laws are adopted, interpreted, and implemented to continue the subordination. They reveal the intricate interweaving of legal, economic, cultural, and social actions that create a web of subordination and contemporary exploitation. Other similar webs that ensnare the vulnerable of any race will be more easily identified through methodologies adopted to disrupt future Black slavery.

Lastly, will the prevalence and identification of the severe forms of contemporary enslavements lead toward an understanding of a global humanity that could challenge the conceptual foundations of white racial supremacy? That is, if *anyone* can be enslaved or exploited, no matter race, ethnicity, national origin, or other origin, might the foundational concepts of racial superiority and inferiority be shaken?

## IV. CONCLUSION

In his autobiography, *Long Walk to Freedom*, Nelson Mandela said: "The truth is that we are not yet free; we have merely achieved the

630 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 53]

freedom to be free, the right not to be oppressed. . . . I kn[o]w as well as I kn[o]w anything that the oppressor must be liberated just as surely as the oppressed.”<sup>77</sup>

The present is the child of the past and the parent of the future. For Diasporic Blacks, the sacred charge from the past (the ancestors) and to the future (the descendants) demands understanding and acknowledgement of the legacy of the past in the present and acknowledgement that the seeds of the future lie in our actions today.

We are all “slaves” to the past, unless we can disrupt the transmission of its legacy into the future. The acknowledgement of Black interests, inclusion of Diasporic voices and their insights into the contemporary anti-exploitation discourse and design, and implementation of structural anti-exploitation and anti-subordination policies are essential to a systemic and structured fight against severe forms of contemporary exploitation. Knowledge about slavery’s past and its relationship to contemporary systems of exploitation can lead to disruption of those legacies in the future.

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<sup>77</sup> NELSON MANDELA, *LONG WALK TO FREEDOM* 624 (paperback ed. 2013).